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6 IN THE DISTRICT COURT OF GUAM
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8 UNITED STATES OF AMERICA,) CIVIL CASE NO. 02-00022
9 Plaintiff,)
10 v.)
11 GOVERNMENT OF GUAM,) **ORDER RE: CONSENT DECREE**
12 Defendant.) **TIMETABLE, FINANCING OPTIONS,**
13) **GUAM LAND USE COMMISSION**

14 On October 22, 2008, the parties came before the court for a status hearing. At that time the
15 Receiver, Gershman, Brickner & Bratton, Inc. ("GBB"), presented its quarterly report in accordance
16 with the court's appointment order. *See* Docket No. 239. The Receiver discussed the progress of
17 the day to day operations of the Solid Waste Management Division since assuming responsibility
18 over it on March 17, 2008. The Receiver also outlined a construction project timetable and
19 discussed in detail the capital financing options to fund the various Consent Decree projects.

20 For the reasons stated below, the court issues this Order approving the proposed timetable,
21 and ordering that within the time period designated herein, the elected leaders of the Government
22 of Guam work cooperatively with GBB in the selection of a financing option, and the Guam Land
23 Use Commission promptly make a determination on the pending zoning petition.

24 **I. HISTORICAL BACKGROUND**

25 The historical background of this case leading up to the entry of the Consent Decree on
26 February 11, 2004, has been presented in several prior orders and need not be reiterated at length

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1 here.¹ The court limits its discussion in this regard as it relates to the events leading up to the court's
2 appointment of a federal receiver over the Solid Waste Management Division ("SWMD") of the
3 Department of Public Works ("DPW").

4 In October 2007, this court began its oversight on this case. Monthly status hearings were
5 held and site visits to the Ordot Dump were regularly conducted. It soon became clear that without
6 immediate action it would be highly unlikely the Ordot Dump would be closed, and the Layon
7 landfill constructed, in accordance with the timeline set forth by the parties.² The Government of
8 Guam already missed many of the deadlines under the Consent Decree, most notably the October
9 2007 deadline for the closure of the Ordot Dump.

10 The inability of the Government of Guam to comply with the terms of the Consent Decree
11 was not necessarily the result of a lack of effort on the part of the current Governor or even DPW.
12 Rather, there was a lack of concerted attention given by those who could best address the magnitude
13 of the problem for the past 22 years. As discussed more fully below, this court has repeatedly
14 prodded the current Guam Legislature to actively participate in charting the course concerning the
15 closure of the Ordot Dump and the opening of a new landfill. The Legislature has, at worst, impeded
16 the Government of Guam's ability to comply with the Consent Decree, and at best, taken no action
17 at all to meet the mandates of the Consent Decree. *See* footnote 3, *infra*.

18 The monthly status hearings and site visits continued, and although assurances were made
19 to this court that DPW was working steadily on the closure of the Ordot dump, little in fact, was
20 being done. The Legislature enacted legislation which prohibited the expenditures of funds for any
21 landfill site that the Government of Guam did not own.³ Ostensibly, the Government of Guam was
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23 ¹ The court hereby incorporates the factual recitations set forth in Docket Nos. 125 and
24 218.

25 ² Again, the timelines set were ones agreed to by the parties in the Consent Decree.

26 ³ In September 2007 Public Law 29-19 was enacted, and Section 98 of that law provided:

27 **(b) Prohibition of Expending Public Funds.** All government of Guam agencies,
28 departments, bureaus, boards, commissions, public corporations, autonomous and

1 prevented from proceeding with the design and construction of the Layon landfill. It was clear that
2 this legislation “paralyzed the Government of Guam’s ability to comply with the mandates of the
3 Consent Decree.” *See* Docket No. 218. As a result, the court invoked its authority under the
4 Supremacy Clause to strike down the legislation. *Id.*

5 Notwithstanding the removal of the impeding legislation, progress was noticeably limited.
6 It was clear that any work would be protracted and slow going at best. Time, however, was not on
7 the Government of Guam’s side, and each passing day with no progress put the public health and
8 welfare at greater risk. Therefore, unconvinced that reasonable steps within the Government of
9 Guam’s power would be taken to ensure compliance with this court’s orders in a timely manner, on
10 March 17, 2008, the court appointed GBB⁴ as the receiver to manage, supervise and oversee the
11 SWMD of DPW. *See* Docket No. 239. This decision was made with due deliberation, and in
12 recognition that the potential for real progress had been, and continued to be, thwarted by
13 institutional and systemic impediments. Specifically, this court noted the lack of funding
14 commitment for Consent Decree projects, the historical failure of the leadership of the Government
15 of Guam to respond to the crisis, and the history of noncompliance with the mandates of the Clean
16 Water Act and the Consent Decree. *See* Docket No. 239.

17 II. IMPROVEMENTS SINCE APPOINTMENT OF FEDERAL RECEIVER

18 Since the appointment of GBB, the improvements in the operation of SWMD have been
19 remarkable. The GBB team first arrived on Guam on April 24, 2008, and immediately began its
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22 semi-autonomous agencies, including . . . , and all other government
23 instrumentalities, *shall* not expend funds on site-specific preparation, design
24 work, mitigation, infrastructure upgrade *or* installation, *or* construction of a new
landfill, *unless* the government of Guam has acquired and recorded fee simple
ownership of the property in question.

25 In other words, this legislation prohibited expenditures toward the opening of Layon because the
26 Government of Guam did not yet own the property.

27 ⁴ GBB is a professional consulting firm with extensive experience in solid waste
28 management operations.

1 assessment of SWMD's operations. GBB found the working conditions deplorable.⁵ At that time,
2 there was only one government-owned garbage truck that was operable, which led to DPW renting
3 additional trucks from private enterprises and implementing a three-shift schedule for residential
4 refuse collection. Furthermore, all the heavy equipment used at the Ordot Dump was rented because
5 the government-owned equipment was in a state of severe disrepair.⁶ Rather than repair a
6 government owned excavator, the Government of Guam instead opted to rent an excavator at a cost
7 of approximately \$260,000 a year.⁷

8 GBB, with the assistance of the Governor's declaration of emergency, has been able to make
9 substantial progress in repairing government-owned equipment. Four garbage trucks are now
10 operational, and three new trucks have been delivered. Shift work was reduced from three to two,
11 and a normal working schedule of one shift has recently been restored. GBB now also has much
12 of the equipment used at the Ordot Dump up and running. The excavator has been repaired and is
13 now operational.

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15 ⁵ Efforts to close the Ordot Dump undeniably require that the staff of SWMD be given
16 the proper tools, resources and facilities, with which to accomplish SWMD's mission. This court
17 conducted an unannounced site visit to SWMD facilities, and found the employees' shower room
18 with no stalls and no shower heads. An employee who wished to shower did so by getting close
19 to a moldy wall with water discharging from a hole on the wall. One garbage truck had an
20 operator sitting on a kitchen chair in the cab of the truck because the original seat had been
21 removed. The fleet maintenance shop had no roof to protect the staff who had to make repairs to
22 the trucks. Additionally, DPW staff brought personal supplies to work in order to repair the
23 government-owned trucks. The court has since revisited the facilities earlier this month and
24 noticed substantial improvements in these areas.

25 ⁶ It was reported to this court that the costs of rented equipment ran as high as \$11,000 a
26 day. At this rate, the leased equipment exceeded a staggering amount of \$4 million annually
27 (almost two-thirds the annual budget of the Solid Waste Management Division). Since
28 September 2008, the average rate for rental equipment has dropped significantly to \$1400 per
day.

⁷ GBB reported that in the year 2000, the excavator broke down and needed a fan belt
replaced at a cost of \$118. Rather than replace the belt, an excavator was rented. The cost of
renting the excavator for the year 2008 was alone almost \$260,000. A new excavator could have
been purchased for approximately \$200,000. If an excavator was rented for the past eight years
(at the stated annual rate herein), the Government of Guam spent over \$2 million instead of
replacing a \$118 fan belt.

1 In order to extend the life of the Ordot Dump, in July 2008, GBB implemented a materials
2 ban on green waste, construction waste and cardboard going into the Ordot Dump. The results of
3 the ban have been significant, with a reduction of approximately 30% in the waste stream.⁸

4 In September 2008, GBB also launched a recycling initiative by strategically placing
5 recycling drop-off containers in three different locations on island. It is anticipated that these efforts
6 will further reduce the waste stream entering the Ordot Dump.

7 Moreover, GBB has continued its progress on finalizing the design of the new landfill, and
8 the Layon zoning issues are expected to be resolved. In sum, the court finds the improvement in
9 SMWD's operations in the last two quarters to be significant.

10 **III. RECEIVER'S PROPOSED TIMETABLE**

11 GBB has now set a timetable for the Consent Decree projects. The most important project,
12 and the one to be given highest priority, is the construction of the new landfill in Layon. Completion
13 of this project is imperative, as Ordot Dump cannot be closed until the new landfill is opened. GBB
14 has planned to allow for construction to proceed, while design, approval and procurement for other
15 phases is ongoing. Toward this end, GBB has projected the start date of January 6, 2009, for the
16 construction to begin on Cells 1 and 2 Earthwork, the Stormwater Management System, and the
17 temporary road to Layon. *See* Docket No. 269. The court is cognizant that this projected start date
18 is approximately three months away. GBB has also scheduled the start date of April 30, 2009, for
19 the installation of the landfill liner systems for Cell 1 and entrance facilities, and for the construction
20 of the access road to the new landfill. Again, this date is just months away. A major phase of
21 construction at the new landfill is the Waste Water Treatment Plan Expansion and construction of
22 a pre-treatment facility and sewer line, which would transport leachate from the new landfill to the
23 Guam Waterworks Authority's treatment plant. GBB estimates that this six-week long project will
24 begin on January 12, 2010. Adhering to these projected construction dates is imperative, especially
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26 ⁸ Prior to the implementation of the ban the average daily volume of waste going into the
27 Ordot Dump was 512 cubic yards. Since the ban went in effect, the average daily volume of
28 waste going into the Ordot Dump has been reduced to 360 cubic yards. *See* Docket No. 269.

1 in regard to the construction of the landfill at Layon, as any delay in progress will concomitantly
2 delay the closure of Ordot Dump.

3 In light of the 22 years of noncompliance and delays by the Government of Guam, the court
4 finds that further delays are unacceptable and will not be tolerated. The court has reviewed the
5 timetable and finds it reasonable and necessary. Accordingly, the court hereby adopts it in whole
6 and hereby **ORDERS** all branches of the Government of Guam, to include but not limited to all
7 Government of Guam agencies, departments and entities, to cooperate with, and assist GBB in
8 meeting the deadlines as set forth in the timetable. *See* Docket No. 269, Tab 4; Docket No. 239.

9 **IV. FUNDING OPTIONS**

10 As noted, it is critical that the schedule as outlined by the Receiver be followed and that
11 funding be in place to pay for the projects as they proceed. It is clear that GBB has spent
12 considerable time in analyzing the financial demands of funding for the various Consent Decree
13 projects. GBB has estimated that the capital funding needed for the projects approximates \$160
14 million. With the aid of financial experts, GBB identified various financing options that the
15 Government of Guam must consider in order to fund the various Consent Decree projects. They are
16 as follows:

17 **A. CAPITAL OPTIONS**

18 **1. PRIVATE CAPITAL**

19 Under a private capital model, all assets would be owned by a private entity that would
20 recover its cost and profit through user charges. To explore this option, GBB issued a Request for
21 Expressions of Interest (RFEI) that was sent to private companies that expressed an interest to GBB
22 or that were suggested by others to GBB as interested and capable of financing and operating the
23 landfill at Layon. In addition, the RFEI was placed on the Receiver's Website to provide further
24 opportunity for other private entities to respond. GBB also sent the RFEI to the Joint Guam Program
25 Office (JGPO) to share with Japanese authorities involved in the planned military build-up and any
26 other group that JGPO believed should be included. The RFEI was an information gathering
27 process designed to assist GBB in analyzing the potential to finance these projects with private
28 capital.

1 Based on all information received, GBB recommended against this option. It found such a
2 financing arrangement complex and would take an extended time to complete, possibly placing the
3 schedule to open a new landfill and close the Ordot Dump in jeopardy. This option is also an
4 incomplete solution because it would provide capital funding for only the new revenue producing
5 facilities and would ignore the other capital needs of the SWMD, the most significant of which is
6 the closing of Ordot Dump. Furthermore, private capital is a more costly approach than other
7 options since the Government of Guam can borrow capital funds less expensively than a private
8 sector company. While some form of tax-exempt financing for this approach may be possible, it is
9 unlikely to be as inexpensive as direct government borrowing. Finally, the Government of Guam
10 would have to cede broad authority to the private entity to assure that the private entity could recover
11 its investment, which would likely require changes in Guam law that would be controversial and
12 likely to cause much debate and unacceptable delay. For these reasons, GBB does not believe
13 private capitalization is a viable option.

14 **2. FEDERAL GRANTS**

15 Another option the Government of Guam may rely upon is the use of federal grants.
16 However, GBB has reported that it does not believe capital funding through federal grants can be
17 realistically relied upon to fund the projects. While the cost of the land needed for the new landfill
18 and the design costs have been paid for by federal grants, there is no guarantee that additional grant
19 funds will be realized to pay for several outstanding Consent Decree projects. Similarly, GBB does
20 not find that reliance on federal grants to be a realistic option.

21 **3. "PAY AS YOU GO"**

22 Under the "pay as you go" approach, funding would have to come directly from the
23 Government of Guam's General Fund. GBB believes a "pay as you go" approach is unnecessarily
24 disruptive to the other operations of the Government of Guam. This approach would require the
25 Government of Guam to pay for the projects from the current revenues of the Government's General
26 Fund. Given the limited financial resources and challenges facing Guam, such an approach could
27 create serious financial stress upon an already taxed economy. Again, GBB does not recommend
28 this option for the Government of Guam.

1 **4. DEBT FINANCING OPTIONS**

2 GBB believes that some sort of debt financing will have to be to be utilized. GBB recognizes
3 that the Government already has a serious deficit and significant demands on its limited resources
4 in many areas, including the impact of the impending build-up of military forces on Guam. Funding
5 these Consent Decree projects without debt financing would appear to place an unacceptable and
6 unnecessary, additional financial burden on the Government of Guam

7 Although debt financing is recommended, GBB recognizes that options for debt financing
8 are limited due to Guam's poor credit history, its current financial condition, and its past poor
9 performance in its solid waste program. GBB discussed the following debt financing options.

10 **a. GENERAL OBLIGATION BONDS**

11 One of the most common and effective means of providing capital funding is through the sale
12 of general obligation bonds. These bonds are commonly understood and accepted in the capital
13 markets and are backed by an unlimited tax pledge (i.e. the government promises to raise taxes to
14 whatever extent required to repay the bond holders). This is called a pledge of the "full faith and
15 credit" of the issuing government. The potential problems to this approach include Guam's poor
16 credit ratings, which reflect the serious financial challenges it continues to confront in the
17 management of its traditional governmental functions. Furthermore, there is a ceiling on general
18 obligation bonds that has resulted in litigation all the way to the United States Supreme Court.
19 Finally, there are also competing priorities for other infrastructure and public needs that will more
20 than consume the available general obligation debt under the current debt ceiling. For these reasons,
21 GBB does not believe this option is viable.

22 **b. TRADITIONAL REVENUE BONDS**

23 Revenue bonds are the most common method for financing the capital needs of a regulated
24 utility such as the SWMD. Bonds are issued to finance the utility's infrastructure and other capital
25 costs and are repaid from the rates charged customers. These rates are set to cover the cost of current
26 operations, debt service on the bonds and provide a reasonable level of reserves to assure stability
27 in operations and rates. Typically, revenue bonds are required to maintain a debt service reserve that
28 is at least one year's debt service to avoid any disruption in the repayment schedule if the utility

1 encounters cash flow problems while in the process of adjusting its rates.

2 The financial markets judge the creditworthiness of the utility by its past track record and the
3 environment in which it operates (political stability, business stability, economic viability and the
4 degree to which the utility holds a monopoly on its market). Guam's SWMD requires much work
5 and time before it is able to meet these expectations in a way that would persuade the markets that
6 it is creditworthy for long-term bonds.

7 The fact that similarly situated utilities on Guam (the Guam Power Authority and the Guam
8 Waterworks Authority) have been able to issue revenue bonds in recent years demonstrates the
9 viability of this option as a funding mechanism. Unfortunately, these examples also demonstrate
10 what is increasingly apparent – that the time required to achieve business stability, demonstrate the
11 economic viability of the SWMD and to pass the laws or bond covenants that confer the monopoly
12 status needed to assure the markets of repayment, is much too long for compliance with the Consent
13 Decree to be achieved in a timely manner.

14 Even with these time constraints, GBB believes revenue bonds still appear to be the most
15 appropriate method of financing for the Government of Guam. In order to issue these bonds in a
16 reasonable timeframe, however, some form of additional security for the bondholders will be needed.

17 **c. TRADITIONAL REVENUE BONDS WITH A SECTION 30 FINANCIAL BACKSTOP**

18 Additional security for revenue bonds is often provided by purchasing insurance or having
19 the government pledge to back up the bonds with general tax revenue. Market conditions for bond
20 insurance at this time are not favorable for utilities, even for utilities with strong performance
21 records, so this is clearly not an option for Guam. Likewise, because of the serious financial
22 conditions in which the Government of Guam currently operates, a general tax pledge is not likely
23 to be effective.

24 In this situation, the term "backstop" is used to describe a financial guarantee that essentially
25 becomes the market's credit insurance. Section 30 Funds are used as a guarantee because they come
26 from the federal government and, with the proper pledge, can be diverted directly to bondholders if
27 necessary. A financial backstop would work as follows: The borrower (in this case the Government
28 of Guam) allows Section 30 funds to be placed in the hands of a trustee. The trustee is also the

1 trustee and custodian for the debt service to repay the bond holders (in some cases there may be two
2 trustees who are contracted to work together).

3 Under this scenario, the trustee receives the debt service funding from tipping fees, pays the
4 bondholders and releases the Section 30 funds to the Government of Guam. Should the trustee not
5 receive all or some portion of the funds required to pay the bondholders, an amount equivalent to
6 the shortfall is deducted from the Section 30 funds and the balance is released to the Government
7 of Guam. In other words, the bondholder is held harmless and the government only loses if it fails
8 to collect and/or transfer the tipping fee revenue needed to pay the bondholders. Since the funds
9 to pay the debt service to the bondholders comes from fees charged to customers of the SWMD, the
10 Government of Guam should never have a loss, unless it takes some action that disrupts the required
11 flow of tipping fees to the trustee. After careful consideration, GBB has recommended that the
12 Consent Decree projects be funded through a revenue bond issued and guaranteed by the
13 Government of Guam's Section 30 funds.⁹

14 GBB has indicated its financing preference and the court concurs with its assessment. At this
15 point, however, the decision regarding the funding option is one preferably best left in the hands of
16 the executive and legislative bodies. Because time is of the essence and GBB's timetable will be
17 adhered to, the decision must be made expeditiously. GBB reported that at the start of January 2009,
18 there must be \$20 million made available to GBB in order for work to begin. Accordingly, the
19 Legislature and Governor are **ORDERED** to choose one of the financing options set forth by GBB or

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23 ⁹ The Receiver has estimated the capital cost of the Consent Decree projects at
24 approximately \$160 million. \$119.6 million of this capital is for the Layon Landfill and related
25 facilities and operating equipment that will be a part of the new solid waste system as
26 recommended by the Receiver. The Receiver intends to set tipping and trash collection fees at a
27 level that will pay for the debt service on this capital. The Consent Decree project for the closure
28 of the Ordot Dump is estimated to cost approximately \$40.1 million. Since the Ordot Dump will
no longer be a revenue producing facility, the Receiver has recommended that any debt service
on the Consent Decree project to close the Ordot Dump be funded from general governmental
revenue or federal capital grants.

1 adopt one of its own, and the counsel for Government of Guam shall file with the court a status
2 report indicating the selected financing option by 12:00 noon, December 1, 2008. The Legislature
3 and Governor shall work with GBB in making this decision.¹⁰

4 **V. GUAM LAND USE COMMISSION**

5 Likewise, the court hereby reminds the Guam Land Use Commission (“GLUC”) that, as an
6 arm of the Government of Guam, it too is bound by the terms of the Consent Decree.¹¹ This court’s
7 order is very clear that the Government of Guam is “enjoined from interfering in any manner, or
8 from failing to cooperate either directly or indirectly, with the Receiver in the performance of its
9 functions and duties.” *See* Docket No. 239, p. 19. This court has repeatedly stated that it respects
10 the process in which Layon was selected as the new landfill site and will continue to enforce the
11 Government of Guam’s selection in this regard. The choice of Layon was a decision made by the
12 Government of Guam with the concurrence of the United States Environmental Protection Agency
13 (“USEPA”) after several other sites were considered by professionals and dismissed as unsuitable.
14 This site selection process concluded after extensive studies and research by USEPA and GEPA.
15 There were more than 20 sites initially identified; a first level screening narrowed the number of
16 potential sites to 12; further screening eliminated another six sites; and the remaining six were
17 evaluated and scored, with Layon receiving highest scores. *See* Docket No. 229. The court cannot
18 emphasize enough that the site selected was agreed upon by the parties, and formally approved by
19 this court. No evidence exists of collusion that would call into question the validity of the selection.
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22 ¹⁰ If the Governor and Legislature choose an option of its own, it must be deemed viable
23 and approved by GBB. Notwithstanding this court’s desire for cooperation in this regard, the
24 Governor and Guam Legislature are reminded that this court endowed the Receiver with the
authority to facilitate the “financing and/or borrowing of such funds necessary to carry out the
duties relating to the Consent Decree” *See* Docket No. 239.

25 ¹¹ The Consent Decree provided that the “Consent Decree shall apply and be binding
26 upon the Government of Guam and its board, directors, agencies, authorities, departments
27 (including and not limited to DPW and the Guam Environmental Protection Agency (“GEPA”)),
and their successors and assigns, and on the United States on behalf of U.S. EPA.” *See* Docket
28 No. 55, Consent Decree ¶ 2.

1 There has never been any allegation to suggest that the site selection process was somehow
2 politically tainted or compromised. Moreover, GBB has agreed with the choice of Layon as a
3 suitable site.

4 Therefore, to effectuate its orders and to safeguard the site selection process, the court hereby
5 **ENJOINS** the GLUC from taking any contrary to the intent and purpose of the Consent Decree. If
6 the GLUC denies the zone change as requested by the Receiver, its board members should be
7 prepared to address this court as to specific reasons why they took such action. For example, the
8 GLUC board members must be prepared to provide this court with sound environmental and
9 scientific bases for their decision.

10 The All Writs Act provides that “[t]he Supreme Court and all courts established by Act of
11 Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and
12 agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). The Supreme Court has
13 interpreted the Act to “authorize a federal court ‘to issue such commands ... as may be necessary or
14 appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise
15 of jurisdiction otherwise obtained.’” *Pennsylvania Bureau of Corrections v. U.S. Marshals Serv.*,
16 474 U.S. 34, 40 (1985) (internal quotations omitted). Accordingly, the GLUC is **ORDERED** to
17 promptly make a determination on the petition to rezone the Layon site suitable for construction of
18 a landfill.¹²

19 VI. ENFORCEMENT OF THE CONSENT DECREE

20 As noted above, the court has adopted the timelines as proposed by the Receiver, GBB. It
21 is, therefore, **ORDERED** that they be followed and that the projects proceed without further delay.
22 If the Government of Guam (which includes the Governor, Guam Legislature, the GLUC, and all
23 government entities and instrumentalities) fails to follow the orders herein, the court shall construe
24 such action, or inaction if that be the case, as a failure to cooperate with the Receiver, in violation

26 ¹² GBB reported to the court that the GLUC meeting on the rezoning issue is scheduled
27 for October 23, 2008. The court expects the GLUC to issue its decision timely and in accordance
28 with this court’s orders.

1 of this Order and Section III.D.2 of the court's order appointing the Receiver. *See* Docket No. 239.

2 The Government of Guam is reminded that a consent decree is a court order as it not only
3 reflects "an agreement of the parties," but also "an agreement that the parties desire and expect will
4 be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally
5 applicable to other judgments and decrees." *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367,
6 378 (1992). "[B]ecause a consent decree is a court-approved order, a district court has broad
7 equitable discretion to enforce the obligations of the decree." *King v. Allied Vision, Ltd.*, 65 F.3d
8 1051, 1058 (2d Cir.1995); *see also E.E.O.C. v. Local 580, Int'l Ass'n of Bridge, Structural and*
9 *Ornamental Ironworkers*, 925 F.2d 588, 593 (2nd Cir. 1991) (stating that a court's "judicial
10 discretion in flexing its supervisory and enforcement muscles is broad.").

11 One of the ways a court can enforce its orders is through the power of contempt. A district
12 court has inherent power to enforce compliance with lawful orders through civil contempt. *Spallone*
13 *v. United States*, 493 U.S. 265, 276 (1990); 18 U.S.C. § 401(3). "A district court has wide latitude
14 in determining whether there has been a contemptuous defiance of a court order." *Hook v. Arizona*,
15 907 F. Supp. 1326, 1339 (D. Az. 1995). There is a wide range of civil contempt sanctions available
16 to a court, such as "fine[s], imprisonment, receivership, and a broader category of creative, non-
17 traditional sanctions." *United States v. States of Tenn.*, 925 F. Supp. 1292, 1303 (W.D. Tenn. 1995).
18 For example, in *Delaware v. Valley Citizens' Council*, 678 F.2d 470 (3d Cir. 1982), the district court
19 in Pennsylvania found the state in civil contempt for failing to comply with a consent decree
20 judgment requiring the implementation of an inspection and maintenance program for auto emission
21 systems. *Id.* at 474. The court ordered the U.S. Secretary of Transportation to refrain from awarding
22 any federal highway funds to the state. *Id.*; *see e.g. F.T.C. v. Gill*, 183 F. Supp.2d 1171, 1186 (C.D.
23 Cal. 2001) (in addition to coercive fines, court ordered rescission of all contracts and appointed a
24 permanent receiver). The court will not hesitate in imposing the full range of equitable sanctions
25 available to it, including the suspension of all federal funds, if the court finds a party in contempt.

26 Even non-parties may be held in contempt. *See, e.g., Peterson v. Highland Music, Inc.*, 140
27 F.3d 1313, 1323 (9th Cir. 1998). "The Supreme Court has repeatedly emphasized the broad
28 equitable powers of the federal courts to shape equitable remedies to the necessities of the particular

1 cases, especially where a federal agency seeks enforcement in the public interest.” *S.E.C. v. Wencke*,
2 622 F.2d 1363, 1371 (9th Cir. 1980); *see also S.E.C. v. Hickey*, 322 F.3d 1123, 1131 (9th Cir. 2003)
3 (authorizing asset freeze of third party to effectuate relief). In *Hickey*, the Ninth Circuit affirmed its
4 earlier holding in *Wencke*, that “[t]he power of a district court to ... grant other forms of ancillary
5 relief does not in the first instance depend on a statutory grant of power from the securities laws.
6 Rather, the authority derives from the inherent power of a court of equity to fashion effective relief.”
7 *Hickey*, 322 F.3d at 1131 (quoting *Wencke*, 622 F.2d at 1371).

8 The Supreme Court has emphasized that all government officials, including legislators, are
9 bound to comply with federal law and with the application of that law by federal courts. *Cooper v.*
10 *Aaron*, 358 U.S. 1, 18 (1945). Our system of ordered liberty and rule of law depends upon the
11 solemn obligation of all citizens, and especially public officials, to obey the law. A legislative body
12 is not endowed with immunity such that it may deliberately disregard valid federal court orders.

13 As discussed herein, the court appointed GBB to oversee the closing of the Ordot Dump and
14 the opening of the Layon landfill. To ensure that GBB can accomplish these tasks in an expeditious
15 manner, there must be cooperation extended to GBB throughout all phases of these projects. Should
16 GBB’s efforts be met with resistance, GBB is entitled to institute civil contempt proceedings on its
17 own. Precedent for such action is found in *Ex Parte Niklaus*, 13 N.W.2d 655 (Neb. 1944). In
18 *Niklaus*, a receiver was appointed in an action wherein the defendants were directed to surrender
19 possession of the real estate involved to the receiver. The court determined that the receiver was
20 entitled to maintain civil contempt proceedings against a defendant who had violated the court order.
21 *Id.* It was deemed immaterial that the receiver was not a party to the action, but was an officer of
22 the court charged with the protection of the res of the litigation for the benefit of the parties.
23 Moreover, the court, specifically stating that it dealt with “presentation of civil contempt,” observed
24 that “it is a matter of no importance who institutes such proceedings, since the alleged contemnor
25 is not prejudiced in his defense by the particular mode in which the facts are brought to the attention
26 of the court.” *Id.* at 658, 659 (quoting 13 C.J. 60).

27 Similarly, in *Potter v. Emerson-Steuben Corp.*, 294 N.Y.S. 970 (N.Y. Sup. Ct. 1937), a
28 permanent receiver of a corporation was held to be entitled to maintain a motion to adjudge the

1 defendants guilty of contempt of court (apparently civil contempt) for failure to comply with the
2 provisions of a judgment directing them to pay over to the receiver specified amounts of money.

3 It is the court's hope that GBB will not have to initiate such proceedings. At the same time,
4 the court has the duty to enforce its orders, and cannot in good conscience ignore the fact that for 22
5 years, the Government of Guam has failed to take any action to improve the environmental and
6 health hazards that have plagued our island, our waters, and our people. Should GBB find it
7 necessary to initiate contempt proceedings, the court will give immediate attention to the request.
8 Lest there be any doubt, the court is committed to ensuring that the work already begun by GBB in
9 its short tenure continues and that GBB receives the full support of the Government of Guam. The
10 people of our island deserve no less from its elected leaders.

11 VII. CONCLUSION

12 For the reasons stated above, the court **HEREBY ORDERS** compliance with the timetable as
13 set forth in the October 22, 2008 Quarterly Report. Additionally, the court **HEREBY ORDERS**:

- 14 1. That the Guam Legislature and Governor work cooperatively with GBB in timely
15 choosing a financing option for the Consent Decree projects, and shall file with the
16 court a status report indicating the selected financing option by 12:00 noon,
17 December 1, 2008;
- 18 2. That the Government of Guam deposit \$20 million to a trustee to be subsequently
19 designated by GBB and approved by the court by January 5, 2009;
- 20 3. That the GLUC promptly make a determination as to the re-zoning petition.

21 **SO ORDERED.**



22
23 /s/ Frances M. Tydingco-Gatewood
24 Chief Judge
25 Dated: Oct 22, 2008
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28